

1 Siovhana Ayala
2 AYALA LAW OFFICE, PC
3 70 W. Franklin St. / P.O. Box 18986
4 Tucson, AZ 85701 / 85731
5 siovhansheridan@gmail.com
6 520.202.0391

7 *Attorney for Petitioner-Plaintiff*

8 UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF ARIZONA

10 Daniel Avila Marin,

11 Petitioner-Plaintiff,

12 v.

13 Pam Bondi, in her Official Capacity,
14 Attorney General of the United States; et
15 al.

16 Respondents-Defendants.

Case No.

A-

**MOTION FOR
TEMPORARY
RESTRAINING ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF EX PARTE
MOTION FOR
TEMPORARY
RESTRAINING ORDER
AND MOTION FOR
PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and
Injunctive Relief

NOTICE OF MOTION

Petitioner Client Name applies to this honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from removing Petitioner from the United States.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: September 5, 2025

Respectfully submitted,

/s/ Siovhan Ayala

Siovhan Ayala

Attorney for Petitioner-Plaintiff Client
Name

1 **I. INTRODUCTION**

2 Respondents unlawfully detain Petitioner-Plaintiff Mr. Daniel Avila Marin,
3 by requiring him to remain detained after 90 days from April 2, 2025, when an
4 Immigration Judge from the U.S. Department of Justice granted Petitioner relief
5 under the Convention Against Torture.

6 Mr. Avila has been detained for more than 90 days post removal order. He
7 has currently been detained for 156 days post removal order, and over a year and
8 three months since being detained by Immigration and Customs Enforcement. He
9 is elderly, being 63 years of age. He is blind in one eye, which was a result of
10 torture he experienced in Mexico.

11 The Due Process Clause and the immigration statute limit ICE's ability to
12 indefinitely detain aliens. 8 U.S.C. § 1231(a)(3); *Zadvydas v. Davis*, 533 U.S. 678,
13 690 (2001).

14 Mr. Avila meets the standard for a temporary restraining order. He is likely
15 to succeed on the merits, he will suffer immediate and irreparable harm absent an
16 order from this Court enjoining the government from continuing his unlawful
17 custody and prohibiting the government to re-arrest him at any future time, unless
18 and until he first receives a hearing before a neutral adjudicator, as demanded by
19 the Constitution. Because holding federal agencies accountable to constitutional
20 demands is in the public interest, the balance of equities and public interest are also
21 strongly in Mr. Avila's favor.

22 **II. STATEMENT OF FACTS AND CASE**

23 Petitioner has been the subject of two prior removal orders, one set of
24 proceedings in 1997, and another in 2013. Following his deportation in 2014,
25 Petitioner entered the United States again without inspection and was apprehended
26 in 2024, when withholding of removal proceedings were once again initiated
27 against him.

1 On April 2, 2025, Petitioner was granted deferral under the CAT by the
2 Immigration Judge. 8 C.F.R. § 1208.17(a). The IJ found that there was a greater
3 than 50 percent likelihood that Petitioner would be tortured if removed to Mexico
4 and ordered deferred protection under CAT until a removal comply with the
5 international law obligations of the United States. Among other harms, Mr. Avila
6 lost an eye due to the torture he endured in Mexico. On July 1, 2025, Petitioner had
7 been detained for 90 following his order of deferred removal under CAT. This
8 detention of more than 90 days after his removal order is in violation of 8 U.S.C.
9 1231(a)(3). Mr. Avila's detention has already caused irreparable suffering and
10 harm to him and his family

11 **III. LEGAL STANDARD**

12 Mr. Avila is entitled to a temporary restraining order if he establishes that he
13 is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the
14 absence of preliminary relief, that the balance of equities tips in [his] favor, and that
15 an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555
16 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
17 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
18 restraining order standards are "substantially identical"). Even if Mr. Avila does not
19 show a likelihood of success on the merits, the Court may still grant a temporary
20 restraining order if he raises "serious questions" as to the merits of his claims, the
21 balance of hardships tips "sharply" in his favor, and the remaining equitable factors
22 are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.
23 2011). As set forth in more detail below, Mr. Avila overwhelmingly satisfies the
24 standards for a temporary restraining order.

25 **ARGUMENT**

26 **A. MR. AVILA WARRANTS A TEMPORARY RESTRAINING** 27 **ORDER** 28

1 A temporary restraining order should be issued if “immediate and irreparable
2 injury, loss, or irreversible damage will result” to the applicant in the absence of an
3 order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to
4 prevent irreparable harm before a preliminary injunction hearing is held.
5 *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local*
6 *No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Avila is likely to remain in
7 unlawful custody in violation of his due process rights without intervention by this
8 Court. Mr. Avila will continue to suffer irreparable injury if he continues to be
9 detained without due process.

10 **1. Mr. Avila is Likely to Succeed on the Merits of His Claim That**
11 **He be Released from Detention**

12 Mr. Avila is likely to succeed on his claim that, in his particular
13 circumstances, his current detention is unlawful because the Due Process Clause
14 and the statute.

15 The District of Arizona has recognized that when the government seeks to
16 revoke or stay a noncitizen’s release from custody, due process under the Fifth
17 Amendment requires a meaningful opportunity to be heard before the deprivation
18 occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8,
19 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S.
20 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of
21 erroneous deprivation; and 3) the burden on the government – “the fundamental
22 requirement of due process – the opportunity to be heard at a meaningful time and
23 manner.” *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v.*
24 *David*, 538 U.S. 715, 717 (2003). In weighing the *Mathews* factors, the court
25 declared that “there is no meaningful dispute that Petitioner has a liberty interest in
26 being heard before the BIA can prolong his detention.” *Organista*, No. CV-18-
27 00285-PHX-GMS, at 4.

1 Likewise, federal district courts in California have repeatedly recognized
 2 that the demands of due process and the limitations on DHS's authority to revoke a
 3 noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay*
 4 both require a pre-deprivation hearing for a noncitizen on bond, like Mr. Avila
 5 before ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D.
 6 Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3
 7 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021
 8 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-
 9 02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would
 10 suffer irreparable harm if re-detained, and required notice and a hearing before any
 11 re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
 12 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest
 13 at plaintiff's ICE interview when he had been on bond for more than five years).
 14 *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4
 15 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-
 16 arrest).

17 Courts analyze procedural due process claims such as this one in two steps:
 18 the first asks whether there exists a protected liberty interest under the Due Process
 19 Clause, and the second examines the procedures necessary to ensure any
 20 deprivation of that protected liberty interest accords with the Constitution. *See*
 21 *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

22 **a. Mr. Avila Has a Protected Liberty Interest in His**
 23 **Conditional Release**

24 Mr. Avila's liberty from immigration custody is protected by the Due Process
 25 Clause: "Freedom from imprisonment—from government custody, detention, or
 26 other forms of physical restraint—lies at the heart of the liberty that [the Due
 27 Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
 28

1 Since April 2, 2025, Mr. Avila has had a final order of removal, which cannot
2 be executed. Accordingly, he retains a weighty liberty interest under the Due
3 Process Clause of the Fifth Amendment in avoiding continued incarceration. *See*
4 *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778,
5 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

6 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
7 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that,
8 “subject to the conditions of his parole, [a parolee] can be gainfully employed and
9 is free to be with family and friends and to form the other enduring attachments of
10 normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at
11 least an implicit promise that parole will be revoked only if he fails to live up to the
12 parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
13 indeterminate, includes many of the core values of unqualified liberty and its
14 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
15 “[b]y whatever name, the liberty is valuable and must be seen within the protection
16 of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

17 This basic principle—that individuals have a liberty interest in their
18 conditional release—has been reinforced by both the Supreme Court and the circuit
19 courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding
20 that individuals placed in a pre-parole program created to reduce prison
21 overcrowding have a protected liberty interest requiring pre-deprivation process);
22 *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
23 probation have a protected liberty interest requiring pre-deprivation process). As
24 the First Circuit has explained, when analyzing the issue of whether a specific
25 conditional release rises to the level of a protected liberty interest, “[c]ourts have
26 resolved the issue by comparing the specific conditional release in the case before
27 them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
28 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and

1 citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683
2 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
3 that freedom is lawfully revocable—has a liberty interest that entitles him to
4 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at
5 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

6 In fact, it is well-established that an individual maintains a protectable liberty
7 interest even where the individual obtains liberty through a mistake of law or fact.
8 *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873
9 (9th Cir. 1982) (noting that due process considerations support the notion that an
10 inmate released on parole by mistake, because he was serving a sentence that did
11 not carry a possibility of parole, could not be re-incarcerated because the mistaken
12 release was not his fault, and he had appropriately adjusted to society, so it “would
13 be inconsistent with fundamental principles of liberty and justice” to return him to
14 prison) (internal quotation marks and citation omitted).

15 Here, when this Court ““compar[es] the release in [Mr. Avila’s case], with
16 the liberty interest in parole as characterized by *Morrissey*,”” they bear similar
17 features in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in
18 *Morrissey*, Mr. Avila’s release “enables him to do a wide range of things open to
19 persons,”” including to live at home, work, care for his family, for whom he is the
20 financial provider, and “be with family and friends and to form the other enduring
21 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

22 **b. Mr. Avila ’s Liberty Interest Mandates His Release from**
23 **Unlawful Custody**

24 Mr. Avila asserts that, here, (1) where his detention would be civil; (2) where
25 he has already been granted protection under the Convention Against Torture by an
26 immigration judge, due process mandates that he be released from his unlawful
27 custody.
28

1 “Adequate, or due, process depends upon the nature of the interest affected.
2 The more important the interest and the greater the effect of its impairment, the
3 greater the procedural safeguards the [government] must provide to satisfy due
4 process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc)
5 (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Mr. Avila ’s]
6 liberty interest against the [government’s] interest in the efficient administration of”
7 its immigration laws to determine what process he is owed to ensure that ICE does
8 not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
9 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its
10 balancing test: “first, the private interest that will be affected by the official action;
11 second, the risk of an erroneous deprivation of such interest through the procedures
12 used, and the probative value, if any, of additional or substitute procedural
13 safeguards; and finally the government’s interest, including the function involved
14 and the fiscal and administrative burdens that the additional or substitute procedural
15 requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
16 *Eldridge*, 424 U.S. 319, 335 (1976)).

17 The Supreme Court “usually has held that the Constitution requires some
18 kind of a hearing *before* the State deprives a person of liberty or property.”
19 *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a
20 “special case” where post-deprivation remedies are “the only remedies the State
21 could be expected to provide” can post-deprivation process satisfy the requirements
22 of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the
23 variables in the *Mathews* equation—the value of deprivation safeguards—is
24 negligible in preventing the kind of deprivation at issue” such that “the State cannot
25 be required constitutionally to do the impossible by providing deprivation process,”
26 can the government avoid providing pre-deprivation process. *Id.*

27 Because, in this case, the provision of a pre-deprivation hearing is both
28 possible and valuable to preventing an erroneous deprivation of liberty, ICE is

1 required to provide Mr. Avila with notice and a hearing *prior* to any re-incarceration
2 and revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d
3 at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg*
4 *v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
5 1984) (holding that individuals awaiting involuntary civil commitment proceedings
6 may not constitutionally be held in jail pending the determination as to whether they
7 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in
8 favor of [Mr. Avila ’s] liberty” and requires a deprivation hearing before a neutral
9 adjudicator.

10 **i. Mr. Avila ’s Private Interest in His Liberty is**
11 **Profound**

12 Under *Morrissey* and its progeny, individuals conditionally released from
13 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408
14 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a
15 person who is in fact free of physical confinement, even if that freedom is lawfully
16 revocable, has a liberty interest that entitles him to constitutional due process before
17 he continues to be incarcerated—apply with even greater force to individuals like
18 Mr. Avila, who are being detained in civil removal proceedings, rather than parolees
19 or probationers who are subject to incarceration as part of a sentence for a criminal
20 conviction. Parolees and probationers have a diminished liberty interest given their
21 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin*
22 *v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee
23 context, the courts have held that the parolee cannot be re-arrested without a due
24 process hearing in which they can raise any claims they may have regarding why
25 their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-
26 92; *Hurd*, 864 F.3d at 683. Thus, Mr. Avila retains a truly weighty liberty interest
27 even though he is under conditional release.

1 What is at stake in this case for Mr. Avila is one of the most profound
 2 individual interests recognized by our legal system: whether ICE may unilaterally
 3 nullify a prior decision releasing a non-citizen from custody and be able to take
 4 away his physical freedom, i.e., his “constitutionally protected interest in avoiding
 5 physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal
 6 quotation omitted). “Freedom from bodily restraint has always been at the core of
 7 the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S.
 8 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—
 9 from government custody, detention, or other forms of physical restraint—lies at
 10 the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v.*
 11 *Oklahoma*, 517 U.S. 348 (1996).

12 Thus, it is clear that there is a profound private interest at stake in this case,
 13 which must be weighed heavily when determining what process he is owed under
 14 the Constitution. *See Mathews*, 424 U.S. at 334-35.

15 **ii. The Government’s Interest in Continued**
 16 **Incarceration of Mr. Avila is Low and the Burden**
 17 **on the Government to Refrain from Releasing Him**
 18 **is Minimal**

19 The government’s interest in maintaining an unlawful detention without a
 20 due process hearing is low, and when weighed against Mr. Avila ’s significant
 21 private interest in his liberty, the scale tips sharply in favor of enjoining
 22 Respondents (1) from keeping him in unlawful custody; and (2) removing him from
 23 the United States in violation of an agency order and district court injunction. It
 24 becomes abundantly clear that the *Mathews* test favors Mr. Avila when the Court
 25 considers that the process he seeks—notice and a hearing regarding whether release
 26 from custody should be revoked—is a standard course of action for the government.
 27 Providing Mr. Avila with a hearing before this Court (or a neutral decisionmaker)
 28 to determine whether there is clear and convincing evidence that Mr. Avila is a

1 flight risk or danger to the community would impose only a *de minimis* burden on
2 the government, because the government routinely provides this sort of hearing to
3 individuals like Mr. Avila.

4 As immigration detention is civil, it can have no punitive purpose. The
5 government's only interest in holding an individual in immigration detention can
6 be to prevent danger to the community or to ensure a noncitizen's appearance at
7 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the
8 government cannot plausibly assert that it has any basis for detaining Mr. Avila
9 when he has been granted protection under the Convention Against Torture. 8
10 C.F.R. 1208.17(a). Furthermore, there is no court hearing scheduled for Mr. Avila's
11 case at this time.

12 The government's interest in detaining Mr. Avila at this time is extremely
13 low. Moreover, the "fiscal and administrative burdens" that his immediate release
14 is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Avila does not
15 seek a unique or expensive form of process, but rather release from unlawful
16 detention, where removal is not reasonably foreseeable.

17 As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to
18 the public of immigration detention are 'staggering': \$158 each day per detainee,
19 amounting to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996. Mr.
20 Avila has been detained for over 17 months in immigration detention.

21 Releasing Mr. Avila from unlawful custody and enjoining Mr. Avila's
22 continued detention is far *less* costly and burdensome for the government than
23 keeping him detained. *Hernandez*, 872 F.3d at 996.

24 Due process also requires consideration of alternatives to detention at any
25 custody redetermination hearing that may occur. The primary purpose of
26 immigration detention is to ensure a noncitizen's appearance during removal
27 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this
28 purpose if there are alternatives to detention that could mitigate risk of flight. *See*

1 *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
2 must be considered in determining whether Mr. Avila's continued incarceration is
3 warranted.

4 As the above-cited authorities show, Mr. Avila is likely to succeed on his
5 claim that the current detention that ICE effectuated 90 days post April 2, 2025, is
6 unlawful. And, at the very minimum, he clearly raises serious questions regarding
7 this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at
8 1135. He will be detained for 180 days on Monday, September 29, 2025.

9 **2. Mr. Avila Will Suffer Irreparable Harm Absent**
10 **Injunctive Relief**

11 Mr. Avila will suffer irreparable harm were he to remain detained after being
12 deprived of his liberty and subjected to unlawful incarceration by immigration
13 authorities without being provided the constitutionally adequate process that this
14 motion for a temporary restraining order seeks. Detainees in ICE custody are held
15 in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016).
16 As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a
17 detrimental impact on the individual. It often means loss of a job; it disrupts family
18 life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972);
19 *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th
20 Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the
21 irreparable harms imposed on anyone subject to immigration detention" including
22 "subpar medical and psychiatric care in ICE detention facilities, the economic
23 burdens imposed on detainees and their families as a result of detention, and the
24 collateral harms to children of detainees whose parents are detained." *Hernandez*,
25 872 F.3d at 995. The government itself has documented alarmingly poor conditions
26 in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG),
27 Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years
28 2020-2023 (2024) (reporting violations of environmental health and safety

standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).¹

As detailed *supra*, Mr. Avila contends that his continued detention violates his due process rights under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Avila from suffering irreparable harm by being subject to unlawful and unjust detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. Avila. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring the ICE to release Mr. Avila from unlawful custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

¹ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed Feb. 6, 2024).

1 A temporary restraining order is in the public interest. First and most
 2 importantly, “it would not be equitable or in the public’s interest to allow [a party]
 3 . . . to violate the requirements of federal law, especially when there are no adequate
 4 remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th
 5 Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.
 6 2013)). If a temporary restraining order is not entered, the government would
 7 effectively be granted permission to detain Mr. Avila in violation of the
 8 requirements of Due Process. “The public interest and the balance of the equities
 9 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream*
 10 *Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also*
 11 *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that
 12 ensures that individuals are not deprived of their liberty and held in immigration
 13 detention because of bonds established by a likely unconstitutional process.”); *cf.*
 14 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
 15 interest concerns are implicated when a constitutional right has been violated,
 16 because all citizens have a stake in upholding the Constitution.”).

17 Therefore, the public interest overwhelmingly favors entering a temporary
 18 restraining order and preliminary injunction.

19 **IV. CONCLUSION**

20 For all the above reasons, this Court should find that Mr. Avila warrants a
 21 temporary restraining order and a preliminary injunction ordering that Respondents
 22 (1) release him from his unlawful custody; and (2) refrain from sending him to any
 23 place outside of the United States.

24 Dated: September 5, 2025

Respectfully submitted,

25
 26 /s/ Siovhan Ayala

Siovhan Ayala
 27 Attorney for Petitioner-Plaintiff
 28